IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944

Nos. 379 and 380

COLORADO INTERSTATE GAS COMPANY
a Corporation, PETITIONER

v.

FEDERAL POWER COMMISSION, CITY AND COUNTY OF DENVER, COLORADO, PUBLIC SERVICE COMMISSION OF WYOMING, COLORADO-WYOMING GAS COMPANY, PUBLIC SERVICE COMPANY OF COLORADO, AND CANADIAN RIVER GAS COMPANY, RESPONDENTS.

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a Corporation, PETITIONER,

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BRIEF OF THE CITY AND COUNTY OF DENVER, SUGGESTING THAT THE COURT BELOW WAS WITHOUT JURISDICTION OVER THE SUBJECT MATTER

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BRIEF OF THE CITY AND COUNTY OF DENVER

INTRODUCTORY STATEMENT

There is now impounded under the order of the Circuit Court of Appeals between five and six millions of dollars which, as we contend, have been wrongfully and illegally taken under compulsion from ultimate gas consumers, the majority of whom are inhabitant gas consumers of this respondent. Each month there is being and will continue to be impounded,

during the pendency of these proceedings, similar large sums which, in equity and good conscience, belong to said gas consumers.

Our contentions are that: (1) although said order was entered without authority, it is binding upon the depositor, upon whose petition it was made, and expressly provides that the moneys so to be impounded shall be

> "Subject, however, to the further order or orders of this Court, to be returned to such ultimate consumers of gas or persons to whom the Court shall find the same should be returned as contemplated by the provisions of the Natural Gas Act," and

(2) For the reason that said Court never at any time had jurisdiction over the subject matter of these proceedings, all moneys that have been collected from said inhabitant gas consumers and voluntarily deposited by said petitioner should forthwith be returned to said gas consumers or to this respondent, as their representative, for distribution to them at the costs of said petitioners.

The City and County of Denver, respondent, is a "Home Rule" City and County that is invested with full power and authority to regulate the local charges for service by public utility corporations under Article XX of the Colorado Constitution and Section 280 of its charter as amended in 1927. It is now confronted with the following facts and circumstances which it feels bound to call to the attention of this Court in fulfillment of its duties as Trustee for its said inhabitant gas consumers.

Said impounding order was entered by said Circuit Court of Appeals upon a petition for stay pending review of an order of the Federal Power Commission that was filed with said Court by the Colorado Interstate Gas Company on April 20th, 1942.

According to the averments shown on the face of said petition for "stay pending review," there was at that time a petition to "rehear and re-open" the same order that was complained of pending before the Federal Power Commission which had not been determined.

After the entry of said impounding order the petitioners herein filed with said Circuit Court of Appeals their petition

for a review of the final order of said Commission. The jurisdictional averments of said petitions were, respectively, as follows:

> (Case No. 379) "Colorado Interstate Gas Co., a Delaware Corporation * * *, petitioner is a private corporation organized and existing under the laws of the State of Delaware, which owns and operates a main transmission natural gas pipeline extending from Clayton Junction, New Mexico, to a point just outside the city limits of the City and County of Denver, State of Colorado. Its general manager and other representatives have their offices at Colorado Springs, Colorado. All of its physical properties are located, and all of its sales take place, within territory comprising the Tenth Circuit." (R.V.1, Page 1-10.)

> (Case No. 380) "Canadian River Gas Co., a Delaware Corporation * * * is engaged in the production and gathering of natural gas in what is known as the Amarillo Texas, or Texas Panhandle Gas Field, and the transportation thereof to certain points for sale, as follows: Substantially all such gas so produced is sold to the Colorado Interstate Gas Co. at a point near Clayton, New Mexico and at Grey, Oklahoma * * *." (R.V.1., Pages 37-42.)

This respondent filed its motion to dismiss said petitions on the ground that said Circuit Court of Appeals was without jurisdiction over the subject matter thereof for the reason, among others, that said petitioners were not "located and did not have their principal places of business" within the territorial limits of said Tenth Circuit. (R.V.1., Pages 122-123.)

Said motion was denied (R.V.1, Page 124), and, thereupon, permission of Court being first had and obtained, said petitioners filed an amendment to their original jurisdictional averments, by adding thereto the matters shown on Pages 125-133(R.V.1.), all of which, from the viewpoint of this respondent, is not only immaterial but emphasizes the invalidity of the original averments which, as we respectfully contend, show that the petitioners are for all purposes of

jurisdiction, for litigation, taxation and regulation, citizens of, that are domiciled or located, and, for all such purposes have their principal places of business in the State of Delaware that is comprised within the Third Circuit of the United States.

In his closing argument before this Court, the Attorney for the Colorado Interstate Gas Company called attention to the terms of said impounding order, and in response to a question propounded by the Chief Justice, indicated an intention on his part to make the contention that said gas consumers would not be entitled to said moneys on final distribution in the event of a decision adverse to said company.

Since said causes were submitted on their merits, this Court has decided the case of Central States Electrical Co. vs. City of Muscatine, Iowa, et al., (now reported in the March 1, 1945, advance sheets of the Supreme Court Reporter at Pages 565-572) and in the determination of the law as applied to the facts of that case it was held that:

> "The Circuit Court of Appeals had no power, at least in the absence of Federal legislation purporting to confer such power upon it, to adjust the gas rates of the Company selling gas to consumers in Iowa, that being a legislative function of the State of Iowa, notwithstanding the proceeding was one to enjoin collection of a rate for interstate service." (Syl.)

While that decision was based upon a statement of facts that are dissimilar to the facts appearing in the record herein, nevertheless, it may be, and as the statements of said attorney would indicate it would seem certain to be, used as a basis of argument whereby to support a general contention that, because the City and County of Denver is vested with full authority to regulate the charges for service by public utility corporations, the Tenth Circuit Court of Appeals would be without power to order the distribution of said impounded moneys to the inhabitant consumers of gas in said City and County of Denver, and thereby cause a further long drawn out delay and costly second appeal to your Honorable Court before final determination of said proceedings could be had

It is in view of the foregoing facts and circumstances that, at this time, this respondent makes this effort to see that, without unnecessary delay, its inhabitant gas consumers shall have returned to them all moneys that have been, are being and will be so illegally taken from them under compulsion under the provisions of said impounding order, and that said Colorado Interstate Gas Company shall not in any respect profit from its own wrong.

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit will be found in R.V.B., Pp. 5066-5094, and is reported in 142 Fed. (2d) 943. The opinion of the Federal Power Commission will be found in R. V. 1, P. 140, and is reported in 43 P. U. R. (N. S.) 205.

JURISDICTION

Jurisdiction of this court is invoked by the petitioners under Section 240(a) of the Jurisdictional Code, as amended by the Act of February 13, 1925, and Section 19(b) of the Natural Gas Act (52 Stat. 821; Title 15, U. S. C. A., Sec. 717(r)):

STATUTE INVOLVED

The statute involved is the Natural Gas Act (52 Stat. 824, 15 U. S. C. A. 717-(r)), and particularly Section 19(b) thereof, which, insofar as material for the consideration of the issue herein presented, provides:

> Sec. 19(b) "Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding, may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia • • • "

QUESTION PRESENTED

The primary questions presented are (1) whether the United States Circuit Court of Appeals for the Tenth Circuit

had jurisdiction over the subject matter of the Petitions for Review, (2) whether said impounding order should be at this time construed and the distribution of moneys impounded thereunder ordered in accordance with the terms thereof as contemplated by the Natural Gas Act.

SUBJECTS OF DISCUSSION

In view of arguments that heretofore have been made and the statements made in the opinion of said Circuit Court of Appeals, the propositions that we have to submit in support of our motion will be presented under the following headings.

I.

THE DESIGNATION OF THE CIRCUIT WHEREIN "THE COMPANY IS LOCATED OR HAS ITS PRINCIPAL PLACE OF BUSINESS" MADE BY SECTION 19(b) OF THE NATURAL GAS ACT IS A MATTER OF JURISDICTION AND NOT OF VENUE.

II.

SECTION 19(b) OF THE NATURAL GAS ACT DOES NOT CONFER GENERAL JURISDICTION FOR SUCH REVIEWS UPON "ANY" CIRCUIT COURT OF APPEALS OF THE UNITED STATES.

III.

WHEN THE PETITIONS FOR REVIEW WERE FILED WITH THE TENTH CIRCUIT COURT OF APPEALS, PETITIONERS WERE LOCATED AND HAD THEIR PRINCIPAL PLACES OF BUSINESS WITHIN THE THIRD CIRCUIT OF THE UNITED STATES.

IV.

THE PARTICLE "OR" WITH WHICH CONGRESS CONNECTED THE TERMS "LOCATED" AND "PRINCIPLE PLACE OF BUSINESS" IN SAID SECTION 19(b) WAS USED AS A CONJUNCTIVE "TO EXPRESS AN ALTERNATIVE OF TERMS, DEFINITIONS OR EXPLANATIONS OF THE SAME THING IN DIFFERET WORDS."

V.

A NATURAL GAS COMPANY WHICH, OR PERSON WHO, IS ENGAGED EXCLUSIVELY IN THE TRANSPORTATION OF NATURAL GAS IN INTERSTATE COMMERCE FOR RESALE, LEGALLY CANNOT "BE LOCATED OR HAVE ITS PRINCIPAL PLACE OF BUSINESS" ELSEWHERE THAN IN THE STATE OF ITS OR HIS DOMICILE FOR THE PURPOSE OF SUING OR DEFENDING PROCEEDINGS *IN PERSONAM* IN RELATION TO THE REGULATION OF SUCH BUSINESS.

VI.

THE IMPOUNDING ORDER OF THE CIRCUIT COURT OF APPEALS SHOULD AT THIS TIME BE CONSTRUED AND THE DISTRIBUTION OF THE MONIES IMPOUNDED THEREUNDER ORDERED IN ACCORDANCE WITH THE TERMS THEREOF AS CONTEMPLATED BY THE NATURAL GAS ACT.

SUMMARY OF ARGUMENT

The major points proposed for consideration in connection with the language of said Section 19(b) of the Natural Gas Act and of the jurisdictional averments of said petitions for review are:

(1) By Paragraph 3 of Section 8, Article I, of the United States Constitution, exclusive authority is conferred upon the Congress "to regulate commerce * * * among the several states, * * *."

(2) By the Natural Gas Act, administrative authority is conferred upon the Federal Power Commission for the regulation only of business of natural gas companies that is exclusively in interstate commerce (Sec. 1(a) and (b) of the act (15 U. S. C. 717)); and a "natural gas company" is defined by section 2, Paragraph 6, of said Act as, "A person engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale."

(3) The transportation or sale of natural gas in interstate commerce by a natural gas company for resale, is a business exclusively in interstate commerce and consists in the exercise of a franchise right to engage in such business which is the principal thing from which all other rights in furtherance thereof spring; in relation to which they are incidents, and the franchise to engage in which is a grant in gross of an incorporeal hereditament that is not appertinent to any particular land or property, but is itself intangible personal property that follows the law of the person of its owner under the common law maxim *mobilia sequuntur personam*, and which for all purposes of jurisdiction, administration, regulation, and taxation, can have no other business situs than that of the domicile of its owner.

(4) A natural gas company under whose certificate of incorporation a franchise right to engage in such a business has been granted by a sovereign state of the United States, cannot be "located or have its principal place of business" elsewhere than in the state of its creation, wherein, of necessity, it must be located and have its principal place of business in order to have any legal existence for the purpose of suing or defending at all.

(5) The particle *or*, as used in said Section 19(b), legally could not have been made use of by the Congress as a disjunctive in the sense of having been intended to answer to an implied preceding "either," but only as a conjunctive "to express an alternative of terms, definitions, or explanations of the same thing in different words," because a corporation legally cannot be located or have its principle place of business elsewhere than in the state by which it was created, and, as a matter of law, that place is the place in that state wherein its "principal office" is located, under the laws thereof, and the terms of its charter or certificate of incorporation upon which its franchise right to be a corporation and to exercise such franchise rights thereby granted were made to depend.

(6) The major and minor premises and conclusions that are embraced within the foregoing generalized statement are:

(a) "Where Congress has not expressly declared a word to have a particular meaning, it will

be presumed to have used the word in its well understood public and judicial meaning," (Toxaway Hotel Co. v. Smathers and Co., 246 U.S. 439), for the reason that it:

"must be presumed also to have had in mind the law as long and uniformly declared by the courts of this country" (Shaw vs. Quincy Mining Co., 145 U.S. 444, p. 449).

(b) Ever since the decision of Covington Drawbridge Co. vs. Shepard et al., infra, wherein Chief Justice Taney said:

"The Covington Drawbridge Company, being chartered by the State of Indiana, it *necessarily* has *its home and place of business* in that state."

this Court and the courts in general of this country have uniformly held and declared that a domestic corporation cannot have ITS "legal existence, home, residence, habitat, domicile, citizenship, location, 'principal office OR place of business'" for purposes of jurisdiction, for litigation, taxation, regulation and other purposes elsewhere than in the state by which it was created; and that, even for such purposes, it is only because the "members of a local 'corporation' are conclusively presumed to be citizens of the State by whose laws it was created, and in which alone the corporate body has a legal existence" that such a corporation can sue or be sued in a Federal Court at all. (Bank of Augusta vs. Earle, 13 Peters 519; Thomas vs. Board of Trustees, 195 U. S. 207, 210, 211).

(c) Section 19(b) of the Natural Gas Act vests jurisdiction only in "any Circuit Court of Appeals of the United States for the circuit wherein the Natural Gas Company to which the order relates is located or has *its* principal place of business," and it is fundamental that:

"Legislative enactments where the language is unambiguous cannot be changed by construction, nor divested of its plain and obvious meaning (State Tonnage Tax Cases, 12 Wall. 204, 217).

(d) It is as thoroughly established by the decisions of this and other courts of this country that the incidental

"means and instruments" by which a business in interstate commerce is carried on or conducted are a part of that business, that have no legal existence apart from the business itself, which is the principal, intangible thing to which such "means and instruments" are incidents, and that such "means and instruments" do not and cannot have an independent "location or place of business" of their own apart from that of their owner for purposes of litigation, jurisdiction, regulation, taxation and other purposes, as it is self evident that Congress has no authority under the Commerce clause of the Federal Constitution to regulate anything else than "commerce with foreign nations, and among the several States, and with the Indian Tribes"; that such "means and instruments," are, for all such purposes, only

> "means and instruments which are employed by Congress to carry into execution the powers given by the people to the Federal Government, whose laws, made in pursuance of the Constitution are supreme," and that,

for all such purposes, the only place of business that is or can exist is the place of the domicile of the owner of the business which, of necessity, follows the law of his or its person, for the simple reason that, because of its intangibility, such a business can have no legal existence, location or place of business apart from that of its owner.

In view of the conditions under which this brief and argument now has to be presented, the foregoing propositions will be discussed and supported by the authorities upon which we rely as if they were in reply to the theories that heretofore have been advanced in arguments and in statements contained in the opinion of said Circuit Court of Appeals.

ARGUMENT

I.

THE DESIGNATION OF THE CIRCUIT WHEREIN "THE COMPANY IS LOCATED OR HAS ITS PRINCIPAL PLACE OF BUSINESS" MADE BY SECTION 19(b) OF THE NATURAL GAS ACT IS A MATTER OF JURISDICTION AND NOT VENUE.

It has been argued that:

> "The designation of the circuit wherein 'the company is located or has its principal place of business' is a matter of venue and not jurisdiction."

As a matter of course (as this statement impliedly concedes), if the question raised is one respecting the jurisdiction of the subject matter, it is one that cannot be waived, and we respectfully suggest that it is such a matter because of the following reasons:

1. The ordinary jurisdiction of all circuit courts of appeals is purely appellate.

2. Such a review is an original proceeding that calls for the exercise of original jurisdiction which, except for the special statutory provisions of Section 19(b) of the Natural Gas Act, would not and could not exist in any circuit court of appeals.

3. Therefore, the purpose of that section necessarily was, according to the literal meaning of its words, to create a right, provide a remedy, and confer jurisdiction for a direct review of administrative orders of the Federal Power Commission. It particularly conditions and limits such jurisdiction in each particular case to the facts thereof which, in each instance, are made the measure by which the right, the remedy, and the jurisdiction are to be determined (18 C.J.S., Sec. 177).

This proceeding is, therefore, a strictly special statutory proceeding that calls for strict construction by the court and for similar adherence thereto by a petitioner thereunder, who, seeking such a review, "must allege exactly those facts the statute names as the basis for the right conferred" (49 C.J., P. 151, Sec. 167).

> "Such jurisdiction as the court of appeals had to review directly the action of administrative agencies is especially conferred by legislation relating specifically to the determinations of such agencies made subject to review and perscribing the manner and extent of such review." *A. F. of L. v. National Labor Board*, 308 U. S. 401, 402, 60 S. Ct. 300, 84 L. Ed. 347; *Federal Trade Commission v. Balme*, 23 Fed. (2d) 615, cert. den., 277 U. S. 598; *Chamber of Commerce v. Federal Trade Commission*, 280 Fed. 45.

By the Natural Gas Act the existence of jurisdiction is conditioned upon the existence of the jurisdictional fact that the natural gas company to which the order relates "is located or has *its* principal place of business" within the circuit wherein the proceeding is instituted. Therefore, that fact is a jurisdictional fact without the existence of which there can be no jurisdiction over the subject matter for such a review, and any attempted review by the court would be a nullity. *Noble v. Union River Logging Company*, 147 U. S. 167; *In re First National Bank of Belle Fourche*, 152 Fed. 64; *McClain v. Kansas City Bridge Co.*, (Missouri) 88 S.W. (2d) 1019.

For these reasons we respectfully suggest:

> "Jurisdiction as the term is to be applied in this instance is the power to hear and determine the controversy persented, in a given set of circumstances. If the court finds the power is not granted, it lacks jurisdiction of the subject matter and must refrain from any adjudication of rights in connection therewith." *In the Matter of the Petition of National Labor Board*, 304 U.S. 486, 58 S. Ct. 1001, 83 L. Ed. 1482; *Spring Coal Co. v. Commissioner of Internal Revenue*, 38 F. (2d) 764; *State ex rel. v. Nixon*, 232 Mo. 496, 134 S. W. 538.

Because the statute does not purport to confer general jurisdiction upon all circuit courts of appeals as a class to hear and determine every such review of the class of reviews for which it confers such a conditioned right and remedy; but fixes the condition under which the jurisdiction may be exercised in each particular instance, both the jurisdiction and the remedy are exclusive (1 C. J. 989, 990), and, if this be a correct statement, we respectfully suggest that in this pro-

ceeding the Tenth Circuit Court of Appeals was without jurisdiction over the subject matter under the rules as stated above and in *Galpin v. Page*, 18 Wall. 350, 31 L. Ed. 959, P. 964, wherein it is said that,

> "Where the general powers of the court are exercised over a class not within its ordinary jurisdiction upon the performance of prescribed conditions, no such presumption (of jurisdiction) will attend the judgment of the court. The facts essential to the exercise of the special jurisdiction must appear in such cases upon the record. The extent of the special jurisdiction and the condition of its exercise over subjects or persons necessarily depend upon the terms upon which the jurisdiction is granted and not upon the rank of the court upon which it is conferred. Such jurisdiction is not therefore the less to be strictly pursued because the same court may posses over other subjects or persons a more extended and general jurisdiction."

For these reasons we respectfully suggest that the question here involved is peculiarly one respecting jurisdiction of the subject matter, and that it is, therefore, one over which the parties to the proceeding can neither by consent confer jurisdiction nor by agreement or conduct waive or estop themselves from questioning. 15 C. J. 802, 806, 844: *Utah-Nevada Co. v. LeLamar*, 113 Fed. 112.

Even if the matter were one of *venue* that might be a subject of waiver, no such waiver can be attributed to this respondent, because it appeared specially for the purpose and moved the lower court to dismiss the petitions on the ground of its lack of jurisdiction (*Leonardi v. Chase National Bank*, 81 Fed. (2d) 19-22).

II.

SECTION 19(b) OF THE NATURAL GAS ACT DOES NOT CONFER GENERAL JURISDICTION FOR SUCH REVIEWS UPON "ANY" CIRCUIT COURT OF APPEALS OF THE UNITED STATES.

Heretofore the argument has been made to the effect that:

> "The use of the comprehensive term 'any circuit' plus the unqualified availability of the Court of Appeals for the District of Columbia, show a congressional intention to vest all intermediate federal appelate courts with the power to review orders of the Commission, leaving the selection of the particular tribunal to the petitioner for review, subject only to objection by the respondent if the circuit selected possesses none of the qualifications specified in Section 19(b), since there is thus a general grant of power to all the Courts of Appeals. The question of which one should exercise that power in a particular case is a question of venue."

If this construction of said section were correct, it would confer jurisdiction upon any Circuit Court of Appeals of the United States, regardless of the circuit for which any such court might have general appelate jurisdiction. But according to its plain words the jurisdiction conferred thereby is a territorial jurisdiction limited to "any Circuit Court of Appeals for the circuit wherein the natural gas company to which the order relates is located or has its principal place of business"; consequently, any other Circuit Court of Appeals than the Circuit Court of Appeals for that particular circuit would not, according to the unambiguous words of the statute, be a court of competent jurisdiction. In Robertson v. Railroad Labor Board, 268 U. S. 619, 45 S. Ct. 621 it is said that: "We are of opinion that by the phrase 'any District Court of the United States' Congress meant any such court 'of competent jurisdiction.' The phrase 'any court' is frequently used in the federal statutes and has been interpreted under similar circumstances as meaning 'any court of competent jurisdiction.'"

III.

WHEN THE PETITIONS FOR REVIEW WERE FILED WITH THE TENTH CIRCUIT COURT OF APPEALS, PETITIONERS WERE LOCATED AND HAD THEIR PRINCIPAL PLACES OF BUSINESS WITHIN THE THIRD CIRCUIT OF THE UNITED STATES.

Heretofore an argument has been made to the effect that:

> "At the time the petition for review was filed • • • the integrated system was *conducted* in all its business and operating phases from the offices maintained by petitioners" that were purely administrative offices in charge of subordinate agents. (142 Fed. (2d) Page 951 par. [4]).

This theory is based upon the false assumptions that offices, agents, agencies, and properties that are mere incidental "means and instruments" that are devoted by the owner thereof to, and constitute a part of, a public utility business that is exclusively in interstate commerce, and that are "managed, supervised, and directed" by its subordinate agents from a central office in a state of its own selection other than the state wherein such owner itself is "located or has its principal office," constitute the place where its business in interstate commerce is conducted, and that the place where such offices, agents, agencies, "means, and instruments" happen to be so located by such owner for the more convenient operation of such incidental "means and instrumentalities," is the place where such public utility company itself is located and has its principal place of business.

But this theory substitutes the location of mere incidental "means and instrumentalities" that are in charge of subordinate agents and are themselves a part of a business that is exclusively in interstate commerce and in no proper sense constitute or contribute to the doing of a local business of any kind, for the location of the owner of the national business of which such "means and instrumentalities" are but incidents, and asserts that the states wherein such "means and instrumentalities" are managed, supervised, and directed by such subordinate agents is the "principal place of business" of the owner of the business which is national in character and extent, both within and without the states wherein such "means and instrumentalities" are located, managed, supervised, and directed, all in disregard of the fact that the "operation" of such incidental "means and instrumentalities" does not constitute or contribute to the "doing" of a local business within those states, and, for that reason, their location does not constitute a place of business of the owner of the national business of which such "means and instrumentalities" are mere incidents; and the further fact that such a corporate entity cannot, for such purposes,

legally be "located or have its principal place of business" or legal existence elsewhere than in the state by which it was created.

Furthermore, said theory ignores the fact that said agents, agencies, "means and instrumentalities" are subordinates of, and are subject to the superior control and direction of, the stockholders and directors who are the governing powers who control the corporate affairs and prescribe the policies of such corporate entities in their exercise of such franchise rights from which such businesses in interstate commerce spring and of which they are themselves but incidents.

Said petitions for review show on their faces that said petitioners are Delaware corporations whose "principal offices" are located in the City of Wilmington, County of Newcastle, in that state (R. V. 2, P. 633, 647); therefore, instead of the offices that are located at Colorado Springs for the more convenient "management, supervision, and direction" of the "operation" of such "means and instrumentalities" that constitute a part of said national business, being the "principal offices" or places where said natural gas companies are "located or have their principal places of business," they are but subordinate administrative offices, agencies, "means and instrumentalities" that are entirely devoted to and a part of said business in interstate commerce, that is itself an incident of the franchise right to engage in it and that is national in its character and extent both within and without the states wherein such offices, agents, agencies, "means and instrumentalities" are located.

For these reasons, we respectfully submit that it affirmatively apears on the faces of said petitions for review that said natural gas companies are not "located" and that they do not "have their principal places of business," within the Tenth Circuit; and that said petitions fail to even mention any place where the stockholders and directors of said companies actually meet to determine their policies and transact their corporate affairs; and that for such reasons the Tenth Circuit Court of Appeals was without jurisdiction over the subject matter of said controversies, because:

> "The business actually engaged in by the appellant (petitioners) was exclusively in interstate

commerce. The maintenance of an office, the purchase of supplies, employment of labor, maintenance and operation of telephone and telegraph lines and automobiles, and appellant's other acts within the Sate, were all exclusively in furtherance of its interstate business; and the property itself, however extensive or of whatever character, was likewise devoted only to that end. They were means and instrumentalities by which that business was done and in no proper sense constituted, or contributed to, the doing of a local business." Ozark Pipe Line Corporation v. Monier, 266 U. S. 555, 45 S. Ct. 184, 186.

"The transportation from wells outside of Ohio by the lines of the producing companies to the state lines and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and in interstate commerce within as well as without that state."

"It is elementary that a state can neither impose a tax on the act of engaging in interstate commerce nor on gross receipts therefrom." East Ohio Gas Company v. Tax Commission, 283 U. S. 465, 51 S. Ct. 499, p. 500; Norfolk, etc., R. Co. v. Pennsylvania, 136 U. S. 114, 10 S. Ct. 958, 34 L. Ed. 394; Missouri v. Kansas Gas Co., 265 U. S. 298, 44 S. Ct. 544; United Fuel Co. v. Hallanan, 42 S. Ct. 105, 66 L. Ed. 234, 257 U. S. 277; Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 S. Ct. 101, 105; State Tax Commission v. Interstate Gas Co. 284 U. S. 41, 52 S. Ct. 62, 76 L. Ed. 156; Heyman v. Hays, 236 U. S. 178, 35 S. Ct. 403, 59 L. Ed. 527; Illinois Gas Co. v. Central Illinois P. S. Co., 314 U. S. 498, 62 S. Ct. 384; Pennsylvania Gas Co. v. Public Service Commission, 252 U. S. 23; Haskell v. Kansas Natural Gas Co., 224, U. S. 217; Public Util. Commission v. Attleboro, 273 U. S. 83, 47 S. Ct. 294; Peoples Natural Gas Co. v. Public Util. Commission, 270 U. S. 550, 46 S. Ct. 371; Public Utilities Commission v. United Fuel Gas Co., 317 U. S. 456, 63 S. Ct. 369, 375; Smith v. United Fuel Gas Co. (West Virginia); 112 S. E.

205; Miller v. United Fuel Gas Co. (West Virginia), 106 S. E. 419; Minnesota Rate Cases, 230 U. S. 352; Southern Pacific Co. v. Kentucky, 222 U. S. 63; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196; West v. Kansas Natural Gas Co., 221 U. S. 229.

While it is, as a matter of course, conceded that the power to tax as property, and the power to regulate, as a public utility, the business of a natural gas company that is engaged in public service, are distinct powers, the exercise of the former being done under the taxing power, and of the latter, under the police power, of government, it would seem to be certain that the question whether, in a given instance, power exists in a particular government for the exercise of either or both of such powers, is purely a question of authority or jurisdiction. In truth, by its taxation, such a business would be indirectly regulated, and, in that sense the power to tax may be said to be a power to regulate. Consequently, whether the jurisdiction sought to be sustained in any given case be for the regulation of such a business in interstate commerce or the franchise right to engage in it by the taxation thereof under the power to tax or by the regulation thereof under the power to regulate, the question is purely one of jurisdiction over the subject matter, because:

> "The exclusive power is, by the Constitution of the United States, delegated to Congress to regulate interstate commerce, and the power to tax is a power to interfere with, or *regulate* * * * "; and
>
> "Commerce is business * * *. It relates to the commercial transaction more than to the calling or occupation; and *any* burden placed upon the income of *commerce* between the states by local authority or *any* impediment to its freedom is an entrenchment upon the power of Congress." City of Topeka v. Jones, 86 P. 162; McCall v. California, 136 U. S. 108; Lyng v. State, 135 U. S. 161, 166.

Our contentions are that the principles set forth in the foregoing cases apply with equal force to both the taxation and the regulation of such business; that states have no more authority to impose burdens upon such a business in interstate commerce by the exercise of one of said powers than by the

exercise of the other; that a business exclusively in interstate commerce is not within the jurisdiction of a state for the exercise of one of said powers any more than for the exercise of the other, for the reason that such business is not local in character or extent; and that, *because* all "means and instrumentalities" that are exclusively in furtherance of, and devoted to, and by which such a business is "*done*," are parts thereof and "in no proper sense constitute or contribute to, the *doing* of a *local* business," for all purposes of jurisdiction for the regulation and/or taxation of such *business*, "such means and instrumentalities" are exactly as foreign to states other than the state of the business domicile of the owner of the business, as is the business exclusively in interstate commerce itself. Consequently, our contention is that, for such purposes, the fact that such "means and instrumentalities" might be located within states other than the state of the business domicile of the owner of such a business (notwithstanding the fact that they might, to the extent that they might consist of *tangible* personal or real property, acquire an actual situs for the purpose of local taxation and sanitary regulation) cannot make of the location of such "means and instrumentalities" in such other states, the place where, or "circuit within which the natural gas company to which the order relates is located or has its principal place of business."

From this viewpoint, we respectfully suggest that the decisions of this court hereinbefore cited, bring the theory that "the integrated system was conducted in all its business and operating phases from the offices maintained by the petitioners," into direct conflict with every authority upon the issue here presented, not only because the maintenance of such offices by the petitioners at the places of their own selection constitutes nothing more or less than the maintenance of agencies or means or instruments for the conduct of "integrated systems" that are in themselves nothing more or less than "means or instrumentalities" designed by petitioners for their own convenience in the conduct of public utility businesses exclusively in interstate commerce, to which both said offices and systems are devoted and of which they constitute a part, but because of the following further reasons:

The franchise right to engage in such an interstate business is the principal thing from which all other rights, prop-

erty, means, and instruments, that are used in connection therewith, spring, and of which they are all but incidents. Such a franchise is a grant in gross of an incorporeal hereditament, that is not appertinent to any specific land or property, and together with the business in which it is engaged and that is incident to its use by its owner, is intangible personal property (Chapman Valve, etc., Co. v. Oconto Water Co., 89 Wisconsin 264; Consolidated Gas Co. v. Baltimore, 101 Maryland 532, 109 A. S. R. 584, 586; Trust Co. of America v. City, 182 Fed. 64, 68).

Such a franchise is a part of the capital of the company that owns it and such capital is intangible property (C. M. & St. Paul R. Co. v. Harmon, 89 Mont. 1, 295 P. 762-769; State Tonnage Tax Case, 12 Wallace 220; National Paper Co. v. Mass., 246 U. S., 135, 142).

Such personal property, by reason of its intangibility, not only consists in its ownership and use, (Dawson v. Ky. Dis. & Warehouse Co., 255 U. S. 288), but it follows the law of the person of such owner under the common law doctrine *mobilia sequuntur personam* (Blodgett v. Silberman, 277 U. S. 1, 48 S. Ct. 410). Therefore, for all jurisdictional purposes for the regulation of the exercise of such franchise rights, all "means and instruments" that are devoted thereto, are but "means which are employed by Congress to carry into execution the powers given by the people to the Federal Government, whose laws, made in pursuance of the Constitution, are supreme." (Transportation Co. v. Wheeling (99 U.S. 273, 277; State Tonnage Tax Cases, 12 Wall. 204).

As shown hereinbefore, said petitioners are citizens of, that are domiciled in, the State of Delaware, wherein their principal offices are located. They are, therefore, "located and have their principal places of business" in that state wherein alone they have or can have any legal existence, be located or have their principal offices or places of business for the exercise of such primary franchise rights or the conduct of their corporate affairs. While ordinary private corporations may conduct or transact ordinary, private industrial business, when so authorized by their charters, elsewhere than in the states by which they are created, a public utility corporation whose business consists only in its exercise of

such a right to engage exclusively in interstate commerce cannot, for such a purpose, be located or have its principal place of business other than in the state of its creation, because, in its exercise of such a primary corporate right in the conduct of such a national business, it does not "do business" within any other state than that of it own creation, however numerous or extensive may be the "means and instrumentalities" that it may own or employ in the furtherance of such business elsewhere than within the state by which it was created (West v. Kansas Natural Gas Co., 221 U. S. 229; Sioux Remedy Co. v. Cope, 235 U. S. 197, 203; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 27; Davis v. Cooper, 262 U. S. 318; International Textile Co. v. Pigg, 217 U. S. 91).

> "The fact that certain acts or transactions require an office and employees to perform and transact them, is not important in determining whether they constitute interstate commerce, and it is not essential to interstate commerce that persons engaged in it have established places of business in the several states or in more than a single state" (15 C. J. S. 281).

The petitions for review herein and the certificates of incorporation of the petitioners show that they were incorporated and have their "principal offices" in the State of Delaware, with authority from that state to conduct such a business in interstate commerce, but they make no pretense of showing any authority from any other state for the conduct of that or any other kind of business. Said petitioners, therefore, have the absolute right to own, occupy, maintain, and operate whatever property, offices, facilities, "means, or instrumentalities" that may be necessary or incidental to the conduct of that business anywhere within the United States; and that business, being national in character and local in its territorial limits to no state or judicial circuit of the United States, petitioner cannot be located or have its principal place of business elsewhere than in the State of Delaware, to which such business in intertate commerce can be referred, because such principal places of business can only be:

> "Where the governing power of the corporation is exercised, where those who meet in counsel have

a right to control its affairs * * *, and not where the labor is performed in executing the requirements of a corporation in transacting *its* business." (Carter v. Spring Branch, 113 Connecticut 636.)

Chapter 65 of the Revised Code of Delaware, under which petitioners were incorporated and by which they are bound (R. V. 2, P. 640) expressly provides that:

(Sec. 5) "The certificate of incorporation shall set forth * * * (2) the name of the county and the city, town or place within the county in which its principal office or place of business is located in this state."

(Sec. 29) "The original or duplicate stock ledger * * * shall, at all times during usual hours of business be open to the examination of every stockholder at its principal office or place of business in this state."

(Sec. 32) "Every corporation shall maintain a principal office or place of business in this state."

The certificates of incorporation of each of the said petitioners, as shown hereinbefore, say:

"Its principal office in the State of Delaware is located at 7 West 10th Street in the City of Wilmington, County of New Castle" (R. V. P. 633, 647).

And Section 19(b) of the Natural Gas Act says as plainly as words can say that jurisdiction for such a review can be obtained only:

"In the Circuit Court of Appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business."

Consequently, petitioners are domestic corporations of the State of Delaware, wherein they do some business that is not exclusively in interstate commerce; and because the only business they do elsewhere in the United States is, as shown on the face of said petitions, exclusively in interstate commerce, and what they do through their subordinate agencies, and instrumentalities that are devoted to said interstate business within the Tenth Circuit thereof, does not "constitute or contribute to the doing of a local business" of any

kind, as hereinbefore shown, it follows as a necessary consequence that, as natural gas companies to which said order of the Federal Power Commission relates, they have no place of business of any kind within any other than the Third Circuit of the United States, wherein the State of Delaware is comprised, to which the plain words of said Section 19(b) could possibly refer, for the simple reason that:

Carlos Ruggles Lumber Co. v. Commonwealth, 261 Massachusetts 450; 158 Northeastern 899, 900:

> "It is manifest that the petitioner during the year in question was 'carrying on' and 'doing business' in this commonwealth which was *not interstate* in its nature. Its main office and principal place of business were here. Its 'corporate functions' were carried on here. This descriptive phrase must include as matter of fair interpretation the holding of meetings of directors and of stockholders, the declaration of dividends, the maintenance of essential corporate offices such as those of the president, treasurer and secretary, the making of corporate records, the keeping of the books of the treasurer and whatever else may be necessary for the continuance of corporate existence."

Mullen v. Northwestern Accident Insurance Co., 26 S. D. 402; 128 N. W. 483:

> "By its 'principal place of business' is meant the place where its president, secretary, and board of directors meet to transact the governing business of the corporation proper, where the books of the corporation are kept; that is, where the governing power of the corporation is exercised and controlled by the board of directors and officers of such corporation, and does *not* mean every place where such corporation may happen to transact business. 6 Words & Phrases, Sec. 5559; Standard Oil Co. v. Commonwealth, 110 Kentucky 821, 62 S. W. 897; Middletown Ferry Co. v. City of Middletown, 40 Connecticutt 65; Milwaukee Steamship Co. v. City of Milwaukee, 83 Wis. 590, 53 N. W. 839, 18 L. R. A. 353."

Galveston, etc., Railway Co. v. Gonzales, 151 U. S. 496, P. 504:

"In the case of a corporation, the question of inhabitancy must be determined not by the residence of any particular officer but by the principal offices of the corporation where its books are kept and its *corporate* business is transacted, even though it may transact its most important business in another place."

State ex rel. v. Ditrict Court, 191 Iowa 244, 182 Northwestern 211:

"The presumption exists that the officers and offices of a corporation are to be found at its principal place of business as defined in its recorded articles. At common law, corporations were created to exist in some particular place. They were not permitted to have two domiciles * * *.

"The residence of a corporation, so far as it has a residence, may be considered as the place where its business is done or its franchises are exercised."

"A corporation cannot acquire a *de facto* residence for the purpose of venue, as in the instant case. It cannot confer jurisdiction or create venue. This is a legislative power."

"A corporation, unlike a natural person, has a stationary legal domicile in the state and county of its creation, which may not be changed at will, but only as authorized by statute. It is not migratory. It is a legal entity, and, as such, its existence, its name, and its residence are born of the law. It can act only through its officers and agents, and through them alone may any business be done by or with the corporation; but its officers, agents, directors, and stockholders, viewed collectively or otherwise, are not the corporation."

"Domestic corporations, being entities created by the law, can only be sued and jurisdiction obtained over them in the manner provided by statute.

"If our statute was silent in the matter, it would not be essential for a corporation upon its organization to designate its principal place of business, or that it should have an office or place of business. Such provisions are written into the statute in order to secure service of process, determine venue, and for the purpose of general jurisdiction and taxation."

IV.

THE PARTICLE "OR" WITH WHICH CONGRESS CONNECTED THE TERMS "LOCATED" AND "PRINCIPAL PLACE OF BUSINESS" IN SAID SECTION 19(b) WAS USED AS A CONJUNCTIVE "TO EXPRESS AN ALTERNATIVE OF TERMS, DEFINITIONS, or EXPLANATIONS OF THE SAME THING IN DIFFERENT WORDS."

We respectfully submit that the uniform decisions of this court and of the courts in general in this country support the proposition that said terms, wherever and whenever they have been so associated, are the equivalents of, or synonymous with, each other and refer to one and the same place. Heretofore, we have challenged the petitioners, and now repeat the challenge, to submit a single decided case or text that has construed a statute in which said terms have been used without modification, for the purposes of jurisdiction, venue of action, taxation, or other purposes, as in said statute, that has not held them to be equivalents that give expression to the same idea. To support this challenge we submit the following from among the many cases and texts upon the subject:

Galveston, etc., Railway v. Gonzales, 151 U. S. 496.
Southern Pacific Co. v. Denton, 146 U. S. 202.
Shaw v. Quincy Mining Co., 145 U. S. 444.
B. & O. Railroad Co. v. Koontz, 104 U. S. 5, Pp. 11-12.
Ex parte Schollenberger, 96 U. S. 369, Pp. 377, 378.
Pennsylvania v. Quicksilver Mining Co., 10 Wall 553.
Insurance Co. v. Frances, 11 Wall. 210-216.
Fairbanks Steam Shovel Co. v. Wills, 240 U. S. 642.
In re: Federal Contracting Co., 212 Fed. 688.
Gorman v. Leach, 11 Fed. (2d) 454, 456.

National City Bank v. Domenech, 71 Fed. (2d) 13.
Leonardi v. Chase Nat'l Bank, 81 Fed. (2d) 19-22.
Firestone & Co. v. Vehicle, etc., Co., 155 Fed. 676.
Manufacturers' National Bank v. Baack, 16 Fed. Co. No. 9052, p. 67.
American Sugar Refining Co. v. Johnson, 60 Fed. 503
A. B. Oil Co., 95 Fed. (2d) 946.
Land Grant R. & T. Co. v. Coffey County, 6 Kan. 149, pp. 154, 155.
Sangamon, etc., R. v. County of Morgan, 14 Ill. 163; 56 A. D. 497.
Aspinwall v. O. & M. R. Co., 20 Ind. 492; 93 A. D. 329.
Jenkins v. Stage Co., 22 Cal. 538.
Union Steamboat v. City of Buffalo, 82 N. Y. 351.
Western Trans. Co. v. Schey, 19 N. Y. 408.
People ex rel. v. Barker, 34 N. Y. S. 269, 270.
Hurley v. Tucker, 112 N. Y. S. 980, 985.
Foreman & Clark v. Bartle, 211 N. Y. S. 602, 604.
Raiola v. Los Angeles First National Bank, 233 N. Y. S. 301.
Southern Express Co. v. Patterson, 122 Tenn. 279; 123 S. W. 353.
State v. Mobile & G. R. Co., 108 Ala. 9; 18 So. 801.
Roberson v. Greenleaf Lum. Co., 153 N. C. 120; 68 S. E. 1064.
Pelton v. Transfer Co., 37 Ohio St. 450.
First National Bank of Everett v. Wilcox, 72 Wash. 473; 130 Pac. 756.
Gallup v. Sacramento Dist., 171 Cal. 71; 151 Pac. 1142.
Bernstein v. Kaplan, 150 Ala. 222; 43 So. 581.
Plummer-Lewis v. Francher, (Miss.) 71 So. 907.
United States v. S. P. Shotter Co., 110 Fed 1.
State ex rel. Harrington v. Vincent, 144 Wash. 246; 257 Pac. 849.
Central Bank of Ga. v. Gibson, 11 Ga. 543.
A. L. Wolff & Co. v. Choctaw, etc., R. Co., 133 Fed. 601.
Frick v. Norfolk & O. V. R. Co., 86 Fed. 725.
West Travel Acc. Assn. v. Taylor, (Neb.) 87 N. W. 950.
Holgate v. Ore. Pac. R. R. Co., 16 Ore. 123;

Crookston v. Centennial Co., 133 Utah 117; 44 Pac. 714,

Mullen v. Northwestern Acc. Co., 128 N. W. 483, 484; 25 S. D. 402.

Nevertheless, in arriving at its conclusion that it had jurisdiction of the subject matter of said petitions for review, and notwithstanding the fact that the foregoing authorities were accessible to it, the Tenth Circuit Court of Appeals held, in substance, that, while said petitioners were not located within said circuit, their "principal places of business" are within it. In so doing, said court said:

> "Congress in the exercise of its discretion authorized a review in the circuit wherein the *principal business* of the corporation is *conducted* (Colorado Interstate Gas Co. v. Federal Power Commission, et al., 142 Fed. (2d) 943, 950-951)."

Plainly, said Section 19(b) of the Natural Gas Act uses no such language, and said court could have done so only upon the theory that such business in interstate commerce is actually "conducted or transacted" by subordinate agents of the company who "manage, supervise, and direct" the maintenance of an office, the purchase of supplies, the employment of labor, maintenance and operation of telephone and telegraph lines and automobiles, and other acts" within and from an administrative office at Colorado Springs, Colorado—all of which were exclusively in furtherance of said company's interstate business and devoted entirely thereto, and none of which "in any proper sense constitute or contribute to the doing of a local busines."

Not only does such a theory substitute subordinate administrative agencies for the stockholders and directors of said companies, and the place where such "means and instrumentalities" that are exclusively in interstate commerce are managed, supervised, and directed by such subordinate agents for the place "where the governing power of a corporation is exercised," but said opinion actually classified the place "where the labor is performed in executing the requirements of the corporation in transacting *its* business" as the "situs of *its* operations," and, with that statement for its premise, reached the conclusion that, "we think it clear that

the principal place of business of each company is in this circuit within the purview of the statute." (142 Fed. (2d) at page 951.)

Thereupon, said court cited, in support of said conclusion, three cases that construed the *National Bankruptcy Act*, the language of which bears no analogy to said Section 19(b) of the Natural Gas Act and the issues in which, we respectfully submit, were as foreign to the issue here involved as the East is to the West. In this manner, said Circuit Court of Appeals has reduced the issue herein to the question, "Where does each of these natural gas companies to which the order relates" have *its* principal place of business."

We respectfully submit that neither of said petitioners has its principal place of business in said circuit, and that the conclusion stated in said opinion is manifestly erroneous for the further reasons:

It is especially to be noted, and particular attention is called to the facts that (1) the theory so advanced makes no distinction whatever between the business of a public utility company that is engaged exclusively in an interstate business of such general public concern and the business of a private corporation that consists only of ordinary industrial business; and (2) it makes no distinction between the principal place of business of a corporation for the conduct of its corporate affairs in the exercise of its primary franchise rights, and the principal place or places of business or businesses for the conduct or transaction of ordinary private industrial business, the conduct of which might constitute some of the objects or purposes for which a private corporation might be created, as stated in its articles of incorporation, pursuant to the statutes of the state by which it is created, and which legally might be conducted in any state or county where permitted.

Said opinion fails to give consideration to the principles that the place where a corporation "is located or has its principal place of business" is one of contractual relationship with the state of its creation, upon which its legal existence depends, and that is determined and governed by the law of that state, while the place or places where it might conduct or carry on its ordinary private industrial business is purely a matter of fact that is determined and governed by, and di-

pendent only upon its own selection, and the comity of any states or countries wherein it might desire to conduct or transact such business. It fails to give consideration to the facts that, in relation to the public from which it derives its corporate being and business domicile for the conduct of its corporate affairs, it is bound by the law of its creation to have and maintain its principal office and place of business within the state of its creation, especially when so required, as by the statute of Delaware and its contract so to do; and because as a matter of common law, it cannot be located or even have a legal existence elsewhere for the conduct of its corporate affairs. (State ex rel. District Court, 191 Iowa 244, 182 Northwestern 211, P. 212; Gorman v. Leach, 11 Fed. (2d) 454, P. 456; Ex Parte Shaw, 145 U. S. 444).

On the other hand, said opinion fails to give consideration to the fact that, in its relations with private individuals in conducting or transacting ordinary industrial business, the conduct or transaction of which might have constituted some of the objects or purposes it proposed in its certificate or articles of incorporation, such a private corporation may have and maintain as many principal places of business as it may from time to time see fit to establish anywhere in any state or country that does not refuse it permission so to do (Standard Oil Co. v. Commonwealth, 110 Kentucky 821, 822; 62 Southwestern 897; Frick v. Norfolk & Co., 86 Fed. 725, 729, 730; Jossey v. Railway Co., (Georgia) 28 Southeastern 273, Georgia 95 Fed. (2d) 946; U. S. v. Shotter, 110 Fed. 867; Stanton v. State Tax Commission, 117 Ohio 436, 159 Northeastern 823).

The Natural Gas Act says nothing whatever concerning any place or places of business or businesses for the conduct, transaction, or carrying on of any private industrial business which might have been stated in the petitioners certificate or articles of incorporation as the purposes of such incorporation. And the business here involved, being of a public nature and, exclusively in interstate commerce, ordinary private industrial business, is beside the question at issue herein and wholly immaterial because even Congress has no jurisdiction for the regulation of such business.

The consequence is that the Tenth Circuit Court of Appeals illegally assumed jurisdiction over the subject matter of these controversies by substituting the place where "means

and instruments" of interstate commerce are physically located for the place where the natural gas companies that own them have their principal places of business, and thereby endowed such companies with "the faculty of arbitrarily selecting" a place for the review of the orders of the Federal Power Commission "in defiance of the law of domicile" (So. Pac. Co. v. Ky., 222 U. S. 63, P. 68).

This was simply a ratification of the theory advanced by the petitioners herein, to the effect that the integrated system was conducted in all its business and operating phases from the offices maintained by petitioners at Colorado Springs. But, we respectfully submit, this does violence to the unambiguous words of said Section 19(b), which has relation solely to the "location or principal place of business of the natural gas company," and, according to the uniform decisions of this court and courts of the country in general, that language refers and can refer only to one and the same place, because the particle "or" that connects said terms is a conjunctive, and said terms are but alternative expressions for the same thing.

We furthermore respectfully submit that this construction of such language is so interrelated with other fundamental principles of corporation law that, of necessity, from the time the first statute that required certificates of incorporation to state the location of the "principal office or place of business" in the state of its creation, was first construed, it became an elementary principle of corporation law in this country, because:

At common law the legal existence, the home, the domicile, the habitat, the residence, the citizenship of a domestic corporation can only be in the state by which it was created (Ex parte Shaw, 145 U. S. 444, P. 449).

A corporation at common law cannot be established or located elsewhere than in the state of its creation by or under the authority of its charter; it must dwell in the place of its creation and cannot migrate to another sovereignty. It cannot change its residence or citizenship and must live and have its being in the state by which it is created. (Bank of Augusta v. Earle, 13 Peters 519 Ex Parte Schollenberger, 96 U. S. 369, 377, 378).

In the case of a corporation the question of habitation must be determined not by the residence of any particular officer but by the principal offices of the corporation where its books are kept and its *corporate* business is transacted, even though it may transact its most important business in another place (Galveston, etc., Railway v. Gonzales, 151 U.S. 496, P. 504).

At common law the place of location of its principal office must be the point at which the corporation as a corporate entity, resides; and, although it may establish subordinate offices of a purely administrative character elsewhere, a distinction must be taken between the principal office of a corporation and such administrative offices as may from time to time be created by it for the more convenient transaction of the business for the conduct of which it was created. It must have a place at which its corporate functions may be performed (Frick v. Norfolk & Ovr. Co., 86 Fed. 725, 729, 730).

For all purposes of suing and being sued within or without the state of its creation, that state is the only place where a corporation can be located, domiciled, reside, inhabit, have a legal existence, home, citizenship, principal office or place of business, because a corporation that is chartered by a state,

> "Necessarily has its home and place of business in that state" (Covington v. Drawbridge Co., 20 How. 227, P. 233).
>
> "It must have a home, a legal existence, a domicile, a principal place of business within the boundaries of the state which creates it. It may send agents into other states to do business, but it cannot migrate in a body to go beyond the jurisdiction of the laws which bind and hold it together. It dissolves into its original elements, and the persons who compose it become only individuals." (State ex rel. v. Milwaukee, etc., Co., 45 Wisc. 579; Land Grant R. & T. Co. v. Commissioner of Coffey County, 6 Kan. 243; Illinois v. Beach, 1 Beas. 31).

Even the ability of a domestic corporation to sue or defend in a Federa lcourt at all has its foundation established in the soil of a "conclusive presumption that the members

thereof are citizens of the state by whose laws it was created and in which alone the corporate body has a legal existence" (Thomas v. Board of Trustees, 195 U. S. 207, 210, 211; Bank of Augusta v. Earle, 13 Peters 519).

On the other hand, it would seem to be equally elementary and academic that at common law the particular place or point within the state of its creation at which its principal office and place of business was to be located was not required to be set forth in the certificate or articles of incorporation of such corporations, and it was the serious difficulties and embarrassments that were caused to litigants in instituting suits, sheriffs and other officers in executing process, and revenue officials in assessing taxes that necessitated resort to oral proof for the establishment of that place, and that were the impelling causes for the enactment in almost all the states of the Union of statutes for the purpose of definitely locating every corporation incorporated thereunder, and its principal place of business, in the state of its creation; and that such statements in certificates or articles of incorporation, in conformity with such statutes, are conclusive (Lloyd's Executorial Trustees v. City of Lynchburg, 112 Va. 627; 75 S. E. 233; 1 Clark & Marsh, Private Corporations, Sec. 122).

1 Machen, Modern Law Corporations, Section 114, says that: "General corporation laws usually require that the incorporation papers shall contain certain particulars regarding the company's office or place of business."

After stating that the original on which such statutes were modeled is the English law, Mr. Machen says, in the same section, "The statutes of almost all states of the Union require that the location of the chief office or place of business in the state shall be specified in the incorporation papers (14 C. J. 338-340; 9 Fletcher Cyc. Corp., P. 661, Sec. 4373).

For the support of the proposition that the particle "or" as used in said Section 19(b) has the established judicial meaning that we suggest, we respectfully call attention to the following:

Said terms as used in such statutes have been construed by the courts as follows:

The place where the principal office is to be located is to be regarded as the residence of the corporation. Fairbanks

Shovel Co. v. Wills, 240 U. S. 648; Pelton v. Transportation Co., 37 O. S. 450; Harrison Bristol v. C. & A. R. R. Co., 15 Ill. 463; First National Bank of Everett v. Wilcox, 72 Wash. 473, 130 Pac. 756; Creditors v. Consumers Lumber Co., 98 Cal. 318; 319, 33 Pac. 196, 197; Gallup v. Drainage District, 107 Cal. 171, 74; 151 Pac. 1142; Sangamon etc., R. R. Co. v. County of Morgan, 14 Ill. 163; Jenkins v. Stage Co., 22 Cal. 538; In re A. B. Oil Co., 95 F. (2d) 946.

"The term 'principal office' was intended to include principal place of business." Bernstein v. Kaplin, 150 Ala. 22, 48 So. 581; Trans. Co. v. Wheeling, 99 U. S. 273.

For the purpose of jurisdiction the phrase "principal place of business" is synonymous with "domicile." Plummer and Lewis Co. v. Francher; (Ala.) 71 So. 907.

The terms "principal office" and "principal place of business" are synonymous. In re Federal Contracting Co., 212 Fed. 688, 692; State v. Mobile, etc., R. Co., 108 Ala. 29, 18 So. 801; Roberson v. Greenleaf Lumber Co., 153 N. Car. 120, 68 S. E. 1064; Hurley v. Tucker, 142 N. Y. S. 980, 985; Foreman Clark Mfg. Co. v. Bartler, 211 N. Y. S. 602, 604; People, ex rel. Barker, 34 N. Y. S. 269, 270.

The "principal office or place of business" means the domicile of the corporation. Southern Express Co. v. Patterson, 122 Tenn. 279, 123 S. W. 353, 359.

The terms "the principal office or principal place of business" of a corporation are but alternative expressions for the same thing and mean one and the same place. State ex rel. Harrington v. Vincent, 144 Wash. 246, 257 Pac. 849; Spratley v. L. & A. R. Ry Co., 77 Ark. 412, 95 S. W. 776.

"The "principal office" of a corporation as designated in its organic certificate fixes the location of the company. Union Steamboat Co. v. City of Buffalo, 82 N. Y. 351; The Oswego Starch Co. v. Dolloway, 21 N. Y. 449; Western Transportation Co. v. Scheu, 19 N. Y. 408; State v. Mobile and O. R. Co., 108 Ala. 9, 18 So. 801; Ex Parte Schollenberger, 96 U. S. 369, Pp. 377, 38; Firestone Tire Co. v. Vehicle Equipment Co., 155 Fed. 676.

The terms "located," "location," and "principal place of business" refer to the place "where the governing power

of the corporation is exercised, where those who meet in council have a right to control its affairs * * * and not where the labor is performed in executing the requirements of a corporation in *transacting* its business.' Carter v. Spring Perch Co., 113 Conn. 636; 155 A. 832; Mullen v. N. W. Accident Ins. Co., 25 S. D. 402; 128 N. W. 483; Standard Oil Co. v. Kentucky, 110 Ky. 821; 62 S. W. 897; Middletown Ferry Co. v. City of Middletown, 40 Conn. 65; Milwaukee Steamship Co. v. City of Milwaukee, 83 Wisc. 590; 53 N. W. 839; Leonardi v. Chase Nat'l Bank, 81 Fed. (2d) 1922.

A corporation cannot be a *resident* of a state where it has its *usual* place of business if it is other than the state of its creation. A. Wolff & Co. v. Choctaw, O. & G. R. Co., 133 Fed. 601.

It is submitted that there are no cases or texts to be found that construe the words "principal office" or "principal place of business" otherwise than as hereinbefore set forth except Mason Co. v. Sharon, 231 Fed. 861, and bankruptcy cases wherein the statutes construed used said terms with modifications and in a qualified sense that set them apart in a class by themselves that is clearly distinguishable; and that distinction has been given thorough consideration and clearly stated in Gorman v. Leach, 11 F. (2d) 454, and in State ex rel. Harrington v. Vincent, 144 Wash. 246; 257 P. 849, and in Roszelle Bros. v. Continental Coal Corp., 235 Fed. 343.

V.

A NATURAL GAS COMPANY WHICH, OR PERSON WHO, IS ENGAGED EXCLUSIVELY IN THE TRANSPORTATION OR SALE OF NATURAL GAS IN INTERSTATE COMMERCE FOR RESALE, LEGALLY CANNOT "BE LOCATED OR HAVE ITS PRINCIPAL PLACE OF BUSINESS" ELSEWHERE THAN IN THE STATE OF ITS OR HIS DOMICILE FOR THE PURPOSE OF SUING OR DEFENDING PROCEEDINGS *IN PERSONAM* IN RELATION TO THE REGULATION OF SUCH BUSINESS.

It has been argued that:

> "The principal place of business of a corporation is the place where its business is actually conducted, from which its operations are directed, and

at which it holds itself out to do business with the public.'

However coreret this statement may be with respect to the ordinary industrial business of private corporations, it has no application here, for the reasons hereinbefore stated.

This definition does violence to the plain words of said Section 19(b), which limits jurisdiction to the "principal place of business" of the natural gas company, and makes no mention or intimation of any "principal place of business" of private industrial corporations where the principal place of business for the conduct of which such companies are created is conducted, transacted, or carried on, or of any place from which industrial operations are directed or at which such a company might hold itself out to do any such business with the public.

State Tonnage Tax Cases, 12 Wall. 204, 217:

> "Legislative enactments where the language is unambiguous cannot be changed by construction, nor can the language be divested of its plain and obvious meaning."

Said definition is derived from the language of the Bankruptcy Act, which has relation to an altogether different statutory provision, that has a history of its own, and the phraseology of which not only differs most radically from that of said Section 19(b), but has required and received the application of rules of construction that were necessitated by facts and circumstances and a subject matter none of which bear any analogy to a proceeding for review such as this. We suggest that reference to the cases cited to support such a proposition except Colorado Interstate Gas Co. v. Federal Power Commission, 142 Fed. (2d) 943, are all bankruptcy cases and that in this case the Tenth Circuit Court of Appeals not only based its decision on such bankruptcy cases, but wholly failed to give any consideration to any of the points to which attention is directed hereinbefore, and, in so doing, actually gave credit to said Section 19(b) for saying the exact opposite of what it actually says and cited said bankruptcy cases as authority for the direct opposite of what those cases that construe that act actually hold as follows:

As respects the language of said Section 19(b), said opinion says that:

> "Congress in the exercise of its discretion authorized a review in the circuit wherein the *principal business* of the corporation is *conducted*, and the Principal *place* of business is where the actual business of the corporation is *conducted* or *transacted*. Cf. In re Guanacevi Tunnel Co., 201 Fed. 216; In re Hudson River Navigation Co., supra; Chicago Bank of Commerce v. Carter, 61 Fed. (2d) 986." * * *
>
> "We think it is clear that the principal place of business of each company is in this circuit within the purview of the statute. Continental Coal Corporation v. Roszelle Bros., supra (242 Fed. 243); Dryden v. Ranger Refining and Pipe Line Co., 280 Fed. 257; In re Lone Star Shipbuilding Co., 6 Fed. (2d) 192."

Here it is especially noticeable not only that said Section 19(b) does not say what this opinion states, and Congress did not thereby so much as indicate an intention to authorize a review in the circuit wherein the *principal business* in which the company is engaged is *conducted*, but that the cases cited in the opinion are all cases under the Bankruptcy Act, all of which follow the construction placed upon that act by Judge Cochran of the Eastern District of Kentucky in Roszelle Bros. v. Continental Coal Corporation, 235 Fed. 342, which was approved and affirmed in Continental Coal Corporation v. Roszelle Bros., 242 Fed. 243, and both of which courts applied to the facts of that case a rule that is the very opposite of that for which said bankruptcy cases are cited, and that is applied in the Colorado Interstate Gas case, supra, as being applicable to the issue presented therein for determination.

We respectfully suggest that the opinion of Judge Cochran, which is followed by all of the other bankruptcy cases that are cited in the Colorado Interstate Gas case, casts an unbroken light upon and altogether dissipates the very broken light that is cast by the opinion in the Colorado Interstate Gas Company case in the following, among other, respects:

As originally enacted, the Bankruptcy Act of 1898 made no provision for bankrupt proceedings by or against corporations. It provided that the district courts shall have power

"to adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their territorial jurisdiction for the preceding six months or the greater portion thereof," etc. (Section 2 of the Bankruptcy Act (Title 11, U. S. C. A. Section 11.)) Later the act was amended by provision that the word "persons" shall include corporation *except* where otherwise provided. (Subdivision 19 of Section 1 of the same act.). And general jurisdiction was vested in all Federal District Courts over the subject matter of bankruptcy proceedings.

A corporation was a party to the proceeding before Judge Cochran. The head office of the corporation was in Tennessee, where its main stockholders and most of its officers and directors, who had general direction and supervision of the business, resided, and where its financial business was conducted. The business of the corporation was private industrial business that consisted in coal mining and shipping operations, and nearly all of its coal lands were in the Eastern District of Kentucky. The question to be decided was whether the *venue* of the proceedings was in Tennessee or Kentucky, and called for a contruction of the provisions of the Bankruptcy Act and a decision of the question whether the "principal place of business" of the corporation had been in Tennessee or Kentucky for the preceding six months or greater part thereof. In view of the ambiguity of the venue provision of the amended Bankruptcy Act in its application to corporations, Judge Cochran considered the old Bankruptcy Act of 1867 as being in *pari materia*, and after having stated the facts of the case in hand, quoted at length from Judge Woodruff's opinion In re Alabama and C. R. R. Co., Fed. Cas. No. 124, that construed that act which fixed the district in which the *debtor* "*had* resided or *carried on* business" as that in which bankruptcy proceedings could be instituted thereunder. Plainly that act contemplated the place where the principal industrial business of the bankrupt debtors had been "carried on" during the preceding time required by the act, and had relation to the place or places where such business or businesses had been carried on or actually transacted or conducted during the time specified, as distinguished from the permanent principal place of business in the states of their creation which quasi-public corporations that are engaged in interstate commerce must have and maintain therein

in order to have any legal or valid existence at all for all purposes or suing and being sued, as shown hereinbefore. Moreover, no question respecting the regulation of interstate commerce was involved in that or any other of said bankruptcy cases. So, construing said bankruptcy acts together, Judge Cochran said:

> "There is no reason to think that the word 'business' in the present act has any different meaning from what it had in the Act of 1867. The change in provision was brought about no doubt by the consideration that a person may *carry on* business in several districts in the meaning thus given to that word, and it was desired to limit the jurisdiction of *bankruptcy* proceedings to the district which was the principal place of *so* doing. * * * If this restricted meaning is to be given to the word 'business' in the present act, then all that is to be considered in determining its principal place of business is where did it mine and sell its coal; and if it mined and sold in different places, which of these was the *principal*. All the rest of the business transacted by it was merely incidental thereto as the referee in the case of In re Elmira Steel Company, supra, expressed it, that is the 'principal place of the *principal* business' that determines jurisdiction."

Judge Cochran held upon the facts of that case that the *venue* was in Kentucky, where the coal was produced and shipped, and not in Tennessee, where the *head* office of the company was located and from whence the business was directed and supervised, and the matter was one over which all Federal District Courts had general jurisdiction. For these reasons we respectfully suggest that it will not only be seen from the opinion in the Colorado Interstate Gas Company case and the record herein that the actual operation, transaction, or conduct of the business of producing and transporting natural gas in interstate commerce by said companies, respectively, was not within the circuit wherein the proceedings for review were instituted in either case, but that the bankruptcy cases that were relied on by the Tenth Circuit Court of Appeals and that are cited to support jurisdiction by the petitioners herein actually refute in the most emphatic manner the very proposition to support which

they have been cited. In truth and fact it actually appears in the most affirmative manner by the purported jurisdictional averments of the petitions for review herein that all the gas that is transported in interstate commerce by the petitioners is produced, gathered in and transported from the State of Texas, without the Tenth Circuit of the United States. For such reasons we respectfully suggest that the bankruptcy cases cited in support of the decision in these cases demonstrate in the most affirmative manner that in matter of both fact and law the Circuit Court of Appeals for the Tenth Circuit was clearly without a semblance of jurisdiction to hear and determine the proceedings for review over which it so assumed jurisdiction.

We, therefore, respectfully submit that the assumption of jurisdiction over the subject matter of the petitions for review herein was manifest error that resulted from acceptance of the definition of the term "principal place of business" that is contained in the National Bankruptcy Act for the determination of the *venue* in such proceedings in said district courts, all of which are vested with general jurisdiction over the subject matter of all such proceedings *in rem* and which are governed in each particular instance by the particular facts of the case, when the "principal place of business" that is defined by said Section 19(b) has relation only to proceedings *in personam*, jurisdiction over the subject matter of which is expressly limited to the territorial jurisdiction of Circuit Courts of Appeals for the particular circuit of the United States "wherein the natural gas company to which the order relates is located or has its principal place of business;" and because both the location and the principal place of business of such a company, as a matter of law, can "only be in the state by which it was created," upon which such companies depend for, and wherein alone they can have, any legal existence, home, residence, domicile, citizenship, habitation, location, principal office, or principal place of business, for all of the reasons hereinbefore set forth, said Tenth Circuit Court of Appeals violated the commerce clause of Section 8, of Article I and the due process clause of the Fifth Amendment of the Constitution of the United States (Pennoyer v. Neff, 95 U. S. 714; 12 C. J. 1225, Section 1001; Robertson v. Railroad Labor Board, 268 U. S. 619 45 S. Ct. 621), the unambitious language of Sec 19(b) of the Natural

Gas Act, and the uniform interpretation that has been given to that language by this Court and the courts of this country in general.

VI.

THE IMPOUNDING ORDER OF THE CIRCUIT COURT OF APPEALS SHOULD AT THIS TIME BE CONSTRUED AND THE DISTRIBUTION OF THE MONIES IMPOUNDED THEREUNDER ORDERED IN ACCORDANCE WITH THE TERMS THEREOF AS CONTEMPLATED BY THE NATURAL GAS ACT.

It appears upon the face of the stay order pending review, under which said moneys are impounded, that the same was entered on May 16, 1942, upon the prayer of a petition filed by the Colorado Interstate Gas Company with said Court on April 20, 1942, when there was then pending before the Federal Power Commission a petition for rehearing which had not been determined (R. V. 1, P. 118). The terms of said stay order are in substance that as surety, and solely in lieu of bond, said moneys were to be deposited under an escrow agreement to be approved by the court, or any Judge thereof upon the following conditions:

1. The petitioner, Colorado Interstate Gas Company, shall pay or cause to be paid to the purchasers of Natural Gas under its rate schedules FPC 1-9, inclusive, referred to in said order of the Commission, as their several interests may appear, the amounts representing the reduction required by said Commission's order; and

2. The amounts so deposited shall * * * remain on deposit as provided in said order and in said escrow agreement, "subject, however, to the further order or orders of this court, to be returned to such ultimate gas consumers or persons to whom the court shall find the same should be returned as contemplated by the provisions of the Natural Gas Act." (R. V. 1, P. 118.)

It also appears on the face of the order entered in said cause on July 8, 1944; (R. V. 8, P. 5095) that said original stay order under which said moneys were to be deposited was continued on the terms and conditions therein set forth until the final disposition of said cause in this Court.

Notwithstanding said original stay order was improvidently entered without authority before the administrative remedy prescribed by the Natural Gas Act was exhausted, (Leebern vs. U. S., 124 Fed. 505; Myers vs. Bethlehem Ship Building Corporation, 303 U. S. 41; 58 Sup. Ct. Rep. 958), it was entered and continued upon the voluntary request of the Colorado Interstate Gas Company who is presumed to have invoked the entry and continuance thereof with full knowledge of the law of the subject. And, we respectfully submit, that the law applicable to the facts shown by this record is as follows:

1. The primary purpose of Congress in passing the Natural Gas Act was to protect ultimate consumers of gas from excessive prices, (Federal Power Commission v. Hope Natural Gas Company, 320 U. S. 591, 510, 512).

2. As stated in the opinion of the Tenth Circuit Court of Appeals, (142 Fed. 2(d) 947, 948, 949) and as shown by the original Memorandum of Stipulations of the joint adventurers who were the prime movers by whom this so-called "integrated system" was initiated and who are primarily interested in the petitioners herein:

> "The primary objectives of the contracting parties, as expressed in their agreement, were the acquisition of natural gas properties in the gas field, the construction of a pipe line from the field to the City of Denver via Pueblo and Colorado Springs, the sale and delivery of natural gas at the city gate of Denver and other cities, and supplying of natural gas to Colorado Fuel and Iron Company at Pueblo * * * Under the terms of the contract * * * Cities Service, through its subsidiaries, was to obtain a franchise and rate ordinance in Denver and Pueblo, respectively, for the sale of natural gas, and convert the artificial distribution plants then in use in such cities into natural gas distribution plants * * * Franchises and rate ordinances were obtained in Denver and Pueblo."

In pursuance of Section 265 (277 of 1927 Edition) and Section 268 (280 of 1927 Edition) of its charter, a franchise and rate ordinance were granted to the Public Service Com-

pany of Colorado (the subsidiary of Cities Service) by this respondent, which, as a party thereto, is the real party in interest therein. International Ry. Co. v. Mann, 224 N. Y. 83; 120 N. E. 153:

> "The city is the real party in intetrest to the agreement. The individual inhabitants are not, nor can they become parties thereto. They merely have the benefit of it while it remains in force * * *
> "If we look to the substance of things we must conclude that the common rights of the inhabitants of the city, secured through the agency of the city officials, are rights of the city."

The City and County of Denver is both a municipality and a "State Commission" within the meaning of the Natural Gas Act, being authorized by Article XX of the Constitution of Colorado, and its charter to regulate the charges for service by public utility corporations.

The monies that are on special deposit in the banks of Denver were deposited and are being deposited by the petitioner under its agreement as aforesaid, and are now being held in trust "subject to the further order or orders of the Court, to be returned to the ultimate consumers of gas or such persons as the Court shall find should receive the same in contemplation of the provisions of the Natural Gas Act."

And the rights of the city in respect of such a fund are stated by this Court, as follows:

In re Engelhard, 231 U. S. 646, 651:

> "It was in consequence of the motion of the city that the telephone company agreed to keep account of charges in excess of the ordinance rates, and, if they should finally be decided to be illegal, to pay into court the excess sums for distribution among its subscribers. It was the representative of all interests to provide for the creation of the fund; it is properly the representative of all interests to see to its proper distribution. This is a necessary deduction from the cases."

WHEREFORE, in consideration of all the foregoing, this respondent contends:

1. That the provisions of the Natural Gas Act and said stay order and escrow agreement contemplate the return of said impounded moneys to said ultimate gas consumers. (R.V.I. pp 115-119).

2. That they are of right entitled thereto, in equity and good conscience, as moneys had and received by the Colorado Interstate Gas Company for their benefit; and are the equitable owners of a primary right thereto.

3. That this respondent, as their legal representative, instituted these proceedings for the benefit of its said inhabitant gas consumers as well as in its own behalf, and is the real party in interest, legally authorized and entitled to receive said moneys for distribution under the further order or orders of said Circuit Court of Appeals at the costs of said petitioners, without diminution or loss of any part of the principal or interest thereon, in accordance with the conditions of said stay order wherein it is expressly provided that said Company shall pay or cause to be paid "all costs which may be adjudged against it should said order of the Commission, as amended, be sustained." (R.V.I. p. 118).

4. That, although said Circuit Court of Appeals had no jurisdiction over the subject matter of said proceedings,

> "Still, this court has full jurisdiction * * * to reverse the action of that court and * * * to remand the cause and give directions to that effect, and also, to direct that a writ of restitution issue to the proper parties."

Morris v. Coton, 8 Wall. 510, 512;

Northwestern Fuel Co. v. Brock, 139 U.S. 216;

U.S. v. Morgan, 309 U.S. 183, 197, 198;

Doggett v. Johnson, 79 Mont. 499; 257 Pac. 267, 268;

Am. Con. Tire Co. v. O'Malley, 342 Mo. 139; 113 S.W. (2d) 795, 804;

Masser v. London, 106 Fla. 474; 145 So. 72, 78, 79;

So. Railway Co. v. Tift, 206 U.S. 434; 51 L. Ed. 1124.

Ex parte Morris and Johnson, 9 Wall. 605.

5. Under the terms of said stay order and escrow agreement said petitioner is bound for the repayment of said moneys, with interest from the dates of all payments to it of overcharges.

Arkadelphia Milling Co. v. St. Louis Southwestern Railway Company et al., 249 U. S. 134,

Ex parte in the Matter of Lincoln Gas and Electric Company, Petitioner, 256 U. S. 512.

Respectfully submitted,

CITY AND COUNTY OF DENVER,

By MALCOLM LINDSEY,
THOMAS H. GIBSON,

Its Attorneys of Record.